

LEANN SUMPTER )  
 Claimant )  
 VS. )  
 ) Docket No. 264,526  
 CHASE CO. HEALTH & REHABILITATION )  
 Respondent )  
 AND )  
 )  
 AMERICAN HOME ASSURANCE COMPANY )  
 Insurance Carrier )

Claimant injured both upper extremities while employed by the respondent. Respondent provided medical treatment for claimant's injuries through orthopedic surgeon William O. Reed, Jr., M.D. Dr. Reed provided conservative treatment for claimant's left upper extremity which included steroid injections. In regard to claimant's right upper extremity, on April 12, 2001, Dr. Reed performed endoscopic decompression of the right median and right ulnar nerve at the wrist. After a regimen of conservative treatment for claimant's left hand and post-operative right hand physical therapy, on July 30, 2001, Dr.

Reed determined claimant had met maximum medical improvement and released claimant for work without restrictions.

Claimant continues to have bilateral pain and discomfort. At claimant's attorney's request, on August 27, 2001, claimant was examined and evaluated by Pedro A. Murati, M.D., a physical medicine and rehabilitation physician. Dr. Murati found claimant with bilateral upper extremity pain. He recommended physical therapy, anti-inflammatory medication, pain medication, possible cortisone injections, a bone scan, repeat NCS/EMG tests and possible recommendation for surgical evaluation.

The respondent argues that the ALJ exceeded his jurisdiction in appointing Dr. Murati as claimant's authorized physician because respondent provided reasonable and necessary medical treatment as required for claimant's work-related injuries until claimant reached maximum medical improvement and was released from medical care.<sup>1</sup> Additionally, respondent argues that if the ALJ found the medical treatment unsatisfactory then the ALJ was required to order respondent to furnish claimant with a list of three health care providers for claimant to select one as claimant's authorized treating physician instead of appointing the physician selected by claimant.<sup>2</sup>

The Board's jurisdiction to review the ALJ's preliminary hearing findings is limited. The Board cannot review an ALJ's preliminary hearing Order unless it is alleged the ALJ exceeded his or her jurisdiction in granting or denying the relief requested.<sup>3</sup> The preliminary findings in regard to disputed issues of whether the claimant suffered an accidental injury, whether the injury arose out of and in the course of the employment, whether notice was given or timely claim made, or whether certain defenses apply, are considered jurisdictional and subject to Board review.<sup>4</sup>

Here, the respondent has requested the Board to review the ALJ's preliminary finding that claimant is entitled to additional medical treatment with Pedro A. Murati, M.D. The preliminary hearing statute specifically gives the ALJ authority to grant or deny a request for medical treatment or payment of temporary total disability compensation to be in effect pending the conclusion of a full hearing on the claims.<sup>5</sup> Thus, even if the ALJ was

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<sup>1</sup> See K.S.A. 44-510h(a).

<sup>2</sup> See 44-510h(b)(1).

<sup>3</sup> See K.S.A. 44-551(b)(2)(A).

<sup>4</sup> See K.S.A. 44-534a(a)(2).

<sup>5</sup> See K.S.A. 44-534a(a)(2).

wrong in deciding claimant's right to further medical treatment, he did not exceed his jurisdiction.<sup>6</sup>

The Board concludes, as it has on numerous occasions,<sup>7</sup> that it does not have jurisdiction, at this stage of the proceedings, to review an ALJ's preliminary finding in regard to granting or denying a request for medical treatment. Accordingly, the respondent's appeal is dismissed.

**WHEREFORE**, it is the finding, decision, and order of the Board that the respondent's appeal should be, and is hereby dismissed and ALJ Brad E. Avery's preliminary hearing Order for Medical Treatment remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 2001.

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BOARD MEMBER

c: Stanley Ausemus, Attorney for Claimant  
Stephen Doherty, Attorney for Respondent  
Brad E. Avery, Administrative Law Judge  
Philip S. Harness, Workers Compensation Director

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<sup>6</sup> See Allen v. Craig, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977).

<sup>7</sup> See Widener v. Southwind Residential Services, WCAB Docket No. 250,239 (February 2000) and Board decisions cited therein.